

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: David B. Kay

Examiner: Unknown

Serial No. Not Assigned

Group Art Unit: Unknown

Filed:

Date: March 12, 2001

For: **OPEN HELICAL ORGANIC TISSUE ANCHOR AND METHOD OF  
FACILITATING HEALING**

Commissioner of Patents and Trademarks  
Washington, DC 20231

**PETITION TO REINSTATE**

Applicant hereby petitions the Commissioner to reinstate the above-noted PCT Application and to afford it a filing date of February 19, 1998, as a National Filing in the United States Patent and Trademark Office.

**REMARKS**

On August 19, 1996, applicant filed a PCT Application PCT/US96/13570 claiming priority to U.S. Application Serial No. 08/517,259 filed August 23, 1995. Attached herewith is a notification of status requirements under 35 U.S.C. §371 dated September 24, 1996. This notification indicates that the U. S. Patent and Trademark Office, in its capacity as designated office, received a copy of the International Application and needed the following items in order to complete National Filing:

The U.S. National Fee  
An Oath or Declaration, and  
Amendments Under PCT Article 19, if any.

These items were filed by the Applicant on February 19, 1998.

Enclosed herewith is a copy of the Express Mail Certificate indicating the filing of the required items in a timely fashion. Specifically, Applicant enclosed a transmittal letter electing the U. S. Patent and Trademark Office, including a fee tabulation and authorization to charge deposit account 08-3150. A check was also enclosed for \$128.00 (copy of the front and back of original check enclosed). In addition, a return postcard, executed Declaration and Power of Attorney, Information Disclosure Statement and 17 references, Declaration for Utility or Design Patent Application, Verified Small Entity Statement, and a Rule 34 Amendment were also enclosed. Copies of the February 19, 1998 Express Mail Air bill, of the date stamped and returned postcard (somehow stamped January 19, 1998 by the PTO mailroom), and of the check are enclosed herewith to verify the date of the transmittal. The check was cashed by the U.S.

Patent and Trademark Office indicating that the application was accepted for National Filing. However, no filing receipt or action has been received.

It is believed that the PTO inadvertently misplaced the documentation, which would have resulted in a U.S. filing date for this application. The applicant's undersigned representative was subsequently contacted by Mr. Darrell Cottman of the U. S. Patent and Trademark Office who indicated that he had received the Information Disclosure Statement and check, but did not have the remainder of the newly filed case. It was believed that this was a matter to be solved between the PCT Office and the U.S. Patent Office in the first instance since the PCT Office indicated that it had forwarded the International Application, and the check had been cashed. Further it is believed that the applicant met all the requirements necessary to be accorded a U.S. filing date as of February 19, 1998, and it is respectfully requested that this case be reinstated effective nunc pro tunc.

Respectfully submitted,

HUDAK & SHUNK CO., L.P.A.



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**ATTORNEY DOCKET NO.:      ORTHO-A-CIP-PCT-US**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Kay, David B.

PCT Application PCT/US96/13570, Filed 08/19/96 claiming priority to  
Application No.: 08/517,259  
Filed: 08/23/95

Group No.:  
Examiner: Jeffrey A. Schmidt  
Date: December 5, 2001

For: **OPEN HELICAL ORGANIC TISSUE ANCHOR AND METHOD OF FACILITATING  
HEALING**

Assistant Commissioner for Patents  
Washington, D.C. 20231

**PETITION TO ACCORD FILING DATE  
FOR EXPRESS MAIL CORRESPONDENCE NOT RECEIVED BY P.T.O.  
(37 C.F.R. SECTION 1.10(e))**

1. This is a petition to accord the correspondence in the above-identified application a filing date of February 19, 1998, which is the date the correspondence was deposited with the U.S.P.S. with proper postage.
2. Submitted herewith is the statement of Laura F. Shunk as to when the discrepancy was discovered and establishing that this petition is being filed promptly thereafter. 37 C.F.R. Section 1.10(e)(1).

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**CERTIFICATE OF MAILING/TRANSMISSION (37 C.F.R. Section 1.8(a))**

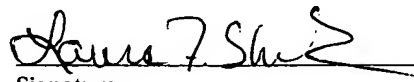
I hereby certify that, on the date shown below, this correspondence is being:

**MAILING**

- ☐ deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.

**FACSIMILE**

- ☐ transmitted by facsimile to the Patent and Trademark Office (703) \_\_\_\_-\_\_\_\_.

  
Signature

Date: December 5, 2001

Laura F. Shunk  
(type or print name of person certifying)

3. The following are the papers required by 37 C.F.R. Section 1.10(e)(3) for this petition:

- \* A true copy of the originally-deposited paper(s) or fee(s) (See item 3 above.)
- \* A true copy of the returned postcard showing receipt of these papers by the P.T.O.
- \* A true copy of the canceled check showing the date for the fee payment by this correspondence
- \* A true copy of the "Express Mail" mailing label showing the "date-in"
- \* A true copy of the Express Mail Log that came into being within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the U.S.P.S.
- \* The log indicating that the correspondence was deposited prior to the last scheduled pickup for that day

and, also attached hereto, is a statement, signed by the person who deposited the documents as "Express Mail" with the USPS, setting forth the date and time of deposit, and declaring that the copies of the correspondence, "Express Mail" mailing label, and returned postcard receipt accompanying this petition are true copies of the correspondence, mailing label and returned postcard receipt originally mailed or received.

4. The petition fee is paid as follows:

Enclosed please find a check payable to the "Commissioner of Patents" for the sum of \$130.00

A duplicate of this petition is enclosed.

Please charge Account No. 08-3150 for any fee deficiency or credit this account for any overpayment for this petition.

Date: December 15, 2001

Reg. No.: 31,423

Tel. No.: 330-535-2220

Laura F. Shunk

Signature of Practitioner

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